

COMPARATIVE ADMINISTRATIVE LAW. Volume I, By Durga Das Basu. 1969. S.C. Sarkar & Sons (P) Ltd, I-C College Square, Calcutta-12. Pp. 507. Rs. 30.00.

Administrative law has come to be recognised as an independent branch of study only in recent years. Before its recognition as such, Administrative Law was dealt with in the works on Constitutional Law. On account of much commonness between Constitutional Law and Administrative Law, writers always felt a difficulty in explaining the scope and limits of Administrative Law without reference to Constitutional Law. The separate treatment of Administrative Law as a subject was denied for a long time both in the United Kingdom and in the United States of America. The dynamic influence of A. V. Dicey, who in fact, repudiated the existence of Administrative Law as far back as in the year 1885 continued to affect the thinking of the writers till the appointment of the Committee on Ministers' Powers in the year 1929. On the Continent, however, *Droit Administratif* or Administrative Law was recognised and studied as a separate subject even during the period earlier than the days of Dicey and it was recognised and studied as a part of Public Law. In the United States Goodnow first took up Administrative Law as a separate subject and he published his book on *Comparative Administrative Law* in 1893. In India Administrative Law is yet in the process of development. The first book on the subject of Administrative Law is the *Lectures on Administrative Law* by N. N. Ghosh (1919), but it remains a book without any practical utility. After independence and after coming into force of the Constitution of India, the study of Administrative Law as a separate subject has received a great impetus. And therefore any good book on Administrative Law and particularly on Comparative Administrative Law is bound to be a book of immense value and interest not only to law students but also to the practitioners of all social sciences.

The author of this book D. D. Basu, is qualified scholar, jurist and a judge of eminence. He is regarded as authoritative and on account of his massive commentary on the Constitution of India, Basu has become a familiar name with the constitutional lawyers. The present work on Comparative Administrative Law is an addition to the series of standard works of Basu. This book, as the author suggests, has not been prepared on the pattern of a student's Manual. In the constitutional writ jurisdiction of the High Courts in India, all the cases do not involve inter-

pretation of the Constitution, on the contrary most of them raise question of *ultra vires*, breach of statutory rights and the questions which appertain to the realm of Administrative Law. As has been rightly pointed out by the author himself in the preface, this book, along with the author's *The Shorter Constitution*, is intended to cover the entire field for a lawyer practising in our courts.

It is indeed a very rewarding book. It is full of insight into the procedural law of the court and its jurisprudence in the field of Administrative Law. It reflects the mature wisdom and long experience of a practitioner, a scholar and a judge.

A substantive part of the book is devoted to the examination of various extensive fields covered by the Administrative Law and its practical application. The whole book is divided into fifteen chapters.

Chapter one of the book is introductory and under this chapter the scope of the Administrative Law and the development of Administrative Law in France, England, the United States and India, has been outlined. The author has pointed out the distinction between Administrative Law, and under the head of "Classification of Administrative Actions", the author has explained the meaning and ambit of "Executive Powers". In the same introductory chapter, the significance of the rule of law and the constitutional background of Administrative Law has also been given. The remaining part of the book is sub-divided into fourteen chapters.

Chapter two is entitled "Separation of Functions and Delegation". The author has dealt with the doctrine of separation of powers, the delegation of legislative power, the power "to remove difficulties", the permissive limits of delegation, the effects of excessive delegations and the doctrine of abdication.

Chapter three deals with "Quasi Legislative Functions of the Administration". The author has discussed a number of legislative functions, the meaning and scope of subordinate legislation and judicial review of subordinate legislation. In the same chapter the author has discussed different kinds of subordinate legislation.

In Chapter four the author has discussed "Administrative Functions". The meaning and ambit of purely administrative functions, non-statutory action and statutory administrative actions have been discussed. The author has also analysed the doctrine of *ultra vires* in relation to administrative orders and the effect of the doctrine on administrative delegation. The maxim *delegatus non potest delegari* has been discussed in detail.

Chapters five, six and seven deal with statutory authorities in general and the principles of 'Natural Justice'.

Administrative Tribunals, the growth of Administrative Tribunals and the working of the Industrial Tribunals in general have been discussed in chapter eight.

Chapter nine deals with the Commissions of Enquiry and under this head the author has discussed the need for Administrative Enquiry, functions of the Commissions of Enquiry; scope of function of the Commissions of Enquiry, procedure of the Commission, legal status of the Commission and the grounds upon which an order constituting a Commission may be challenged.

Chapter ten is devoted to 'Statutory Domestic Tribunals'. The author has pointed out the distinction between contractual and statutory tribunals.

Chapter eleven is entitled "Ombudsman". Under this head the author has discussed about the office of Ombudsman, the Lokpal, the nature of a statutory corporation and features of statutory and public corporations.

Chapters twelve and thirteen respectively deal with statutory and public corporations and judicial control of administrative actions. Under the latter head the author has discussed the need for judicial control. Review, appeal, administrative review, scope of the review of administrative action, judicial review of non-statutory action and quasi-judicial decisions have been discussed. The sub-heading "Judicial Review of Quasi-Judicial Decisions" has been further sub-divided into five sub-headings under which the author has dealt with the absence and excess of jurisdiction and erroneous exercise of jurisdiction, error apparent on the face of the record, breach of natural justice, fraud and unconstitutionality.

In Chapter fourteen, the author has dealt with the limits of the judicial review. This chapter has been further sub-divided into eleven heads which include the need for limitation, the various presumptions, the exclusive judicial review and the doctrine of severability.

The last chapter fifteen deals with the forms of judicial review and in this chapter the author has discussed the particular ambits of judicial review including Prerogative Writs, Appeals to the Supreme Court by special leave, supervisory jurisdiction of the High Court under article 227 and remedies under the ordinary law which include declaratory action and injunction. In the same chapter the author has dealt with statutory remedies which include, according to him, statutory review including statutory appeal and reference to the High Court of statement of cases and statutory revision. In the same chapter, under the sub-division entitled "Prerogative Writs", the author has particularly discussed the five prerogative writs—*Habeas Corpus Mandamus, Pro-*

hibition, Certiorari and Quo-Warranto

Such is the scheme of the book under review and as it is evident, it covers an extensive field of investigation into various aspects of Administrative Law and Administrative Justice. The area of the field of investigation has become wider with an attempt to compare different aspects of the Administrative Law prevailing in different countries like England, USA, Canada, Australia, India and others. The task is not an easy one because any attempt to compare the Administrative Law of one country with that of the other can be deceptive unless a careful study is made about the stages of the law of each country which is brought into comparison and it is only when the Administrative Law in one country as it prevailed during a particular period of time is examined that one can rightly appreciate the essential difference or similarity between the two systems of law and fundamental ideas at the base of Administrative Law under the systems of comparison. The author has carefully dealt with this problem in the book under review and has proceeded to give, immediately after the topic of the study, comparative provisions of relative Administrative Law and then he has given critical, comparative and analytical study of the whole subject. This gives the reader a lucid idea of the comparative systems at one glance and in one place. The merits of the discussion are further improved by the incorporation of the relative statutory provisions and case-law immediately after the subject of discussion.

The author has expressed his opinions at places. For example, under the sub-head "Defective statutory instruments: how far affect operation of the statute," the author has expressed his opinion thus:

In the case of conditional legislation where the commencement or operation of a statute depends upon a modification or order of the executive, in the manner provided by the statute, a question naturally arises as to how far the operation of the statute would be arrested by any defect in the notification.

In such a case a distinction must be made as between a defect going to the root of the validity of the notification which makes it *ultra vires* and a curable irregularity.

Again, for example, another opinion of the author is expressed under the head "Classification of Administrative Action". Speaking about the Executive power, the author says at page 9:

It was once thought that the function of the Executive was simply to execute the laws. But as shown more fully with the advent of the "Welfare State" and the growth of industrialization with its concomitant problems, the State has ceased to be a mere Police State and the function of the Executive has ceased to be merely the carrying out of the laws made by the Legislature. The Executive has to initiate policy and it is open to the Executive to undertake measures in various spheres either without legislation or in advance of legislative sanction.

The result of this opinion is expressed further at page 10:

Administrative order may be made not only in execution of statutory power but may sometimes be made without any statutory authority for legislative sanction is not necessary for all executive acts.

The doctrine of *ultra vires* has been discussed by the author at considerable length. The excessive delegation of power by the legislature attracts the concept of judicial control based on the doctrine of *ultra vires* which strikes down all illegal acts contravening the statutes or the rules of natural justice. The comparative study of the doctrine of *ultra vires* made by the author explains in a simple and understandable manner the entire concept of the doctrine of *ultra vires*. The illustrations based on relative case-law have made this difficult subject very easy to understand.

The concept of natural justice has been thoroughly discussed by the author in about fifty-six pages. The treatment of this difficult topic is scientific and analytical. The reader will be able to grasp very easily the basic ideas of the rules of natural justice as interpreted by the courts in India and in other countries through illustrations and the case-study method.

The forms of judicial review, which have been discussed in chapter fifteen have taken up a major part of the book. The discussion under this chapter will be of great help to practising lawyers, at least to the beginners in the profession of law. One who has read the author's commentary on the Constitution of India, (fifth edition), will find that much of the material in chapter fifteen of the present book under review, has been taken from 'Volume three' of the commentary which was published in the year 1967. The relevant case-law upto 1969 has, however, been added in this chapter.

It will be observed that while on the one hand in expressing his opinions on the matters of controversy involved in the subject-

matter of this study, the author has shown his judicial acumen, on the other hand, in dealing with subjects like the doctrine of *ultra vires*, the author has shown the approach of a law teacher.

The value and utility of the book under review could have been improved if the publishers had taken care to avoid printing errors at places. The utility of the book could be further improved by giving an index at the end of this volume also and by giving a table of the cases cited.

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